

Private Letter Ruling: Taxpayer engaged in two or more nonunitary businesses must apportion the business income of each business separately, using the factors appropriate to that business.

March 25, 1999

Dear:

This is in response to your letter dated March 17, 1999, in which you request a Private Letter Ruling on behalf of xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.1120 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

We are writing to request a private letter ruling on behalf of our client, xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. (xxxx x xx-xxxxxxx) (hereafter "xxx"), under 2 Ill. Adm. Code Section 1200.110, related to the proper filing of an IL-1065 Illinois Partnership Replacement Tax Return (hereafter "IL-1065") when a taxpayer has more than one nonunitary business.

xxx is a partnership that is comprised of two nonunitary businesses, each of which is in a separate division. Illinois taxpayers that have more than one nonunitary business apportion the income from each business separately. Specifically, 86 Ill. Admin. Code Sec. 100.3010(b) provides, in relevant part:

"A person may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. In the case of a person other than a resident, the income of each business is then apportioned by a formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned."

The IL-1065 does not provide a method for taxpayers that have more than one trade or business to properly reflect their Illinois income. On Part III of the form IL-1065 the partnership shows its entire income and apportionment factors. The form does not allow the partnership to separate its income and apportionment factors between different trades or businesses. xxx has received notices from the Department the last two years regarding how it has reported its income.

RULING REQUEST

Assuming that the two divisions of xxx are not unitary with one another and are separate businesses under 100.3010(b), we request guidance from the Department regarding how xxx should file its IL-1065.

PROPOSED SOLUTION

The following is our recommendation regarding how xxx should file its IL-1065.

1. We suggest that the phrase "See Statement Attached" be clearly written in Part III of the IL-1065 "Base income (loss) allocable to Illinois."
2. The attachment will show a computation of the income sourced to Illinois for each trade or business. The attachment will mirror Part III of the 1065, except that each line item will be broken out separately for each trade or business.
3. The business income apportioned to Illinois and nonbusiness income allocated to Illinois for each trade or business will be added together and the sum will be reported on Part III line 10 "Base income or net loss allocable to Illinois."
4. The partnership will report to each partner his or her share of the income from each division (i.e. trade or business) sourced to Illinois. Under the partnership agreement, the income or loss from each division is allocated to the partners separately. For many of the partners, their profit or loss interest varies between the two divisions. The Illinois source income for each division will be allocated to each partner based on the partnership agreement (i.e. if partner A has a 10% profit interest in Division 1, then he will be allocated 10% of Division 1's Illinois sourced income).

These procedures will need to be altered accordingly in the event of any future changes in the form IL-1065

TAXPAYER REPRESENTATION

xxx is represented in making this ruling request by xxxxxx xxxxxxxx xxx. A power of attorney appointing xxxxxxxx x. xxxxxxxx and xxxxxx xx xxxxxxxx of that firm for purposes of this ruling has been attached.

Ruling

86 Ill. Admin. Code § 100.3010(b) provides:

Two or more businesses of a single person.

- 1) A person may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. In the case of a person other than a resident, the income of each business is then apportioned by a formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.
- 2) Example: The person is a corporation with three operating divisions. One division is engaged in manufacturing aerospace items for the federal government. Another division is engaged in growing tobacco products. The third division produces and distributes motion pictures for theaters and television. Each division operates independently; there is no strong central management. Each division operates in this state as well as in other states. In this case, it is fair to conclude that the

corporation is engaged in three separate "trades or businesses". Accordingly, the amount of business income attributable to the corporation's trade or business activities in this state is determined by applying an apportionment formula to the business income of each business.

Pursuant to this rule, if xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. is engaged in two separate businesses, it is required to apportion the business income derived from each business separately, using the apportionment factors appropriate to each business. The method you propose for reporting this apportionment on the Form IL-1065 is reasonable. Accordingly, assuming the accuracy of your representation that xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxxx is in fact engaged in two separate, nonunitary businesses, it should report its apportionment of the incomes from those businesses as you propose.

Note that this ruling does not concede the accuracy of your representation that xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx. is engaged in two separate, nonunitary businesses. That determination can only be made after a review of all relevant facts upon audit of the returns of xxxxxxxx xxxxxxxx xxxx xxxxxxxx, xxx.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Very truly yours,

Bill Lundeen
Chief Counsel -- Illinois Department of Revenue